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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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AVT NEW JERSEY, L.P., a Utah limited  
partnership,

Plaintiff,

v.

CUBITAC CORP., a New York corporation,  
and YOEL WEISS, a citizen of New York,

Defendants.

**MOTION FOR ALTERNATIVE SERVICE**

Civil No. 2:19-cv-00662-JNP

Judge Jill N. Parrish

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Plaintiff AVT New Jersey, L.P. (“AVT”), by and through its undersigned counsel, hereby moves the Court for an order allowing for alternative service upon Defendant Yoel Weiss (“Defendant Weiss”) both as an individual and as an officer of agent for Defendant Cubitac Corp. (“Defendant Cubitac”).

**STATEMENT OF RELIEF REQUESTED**

AVT has worked to serve Defendant Weiss but has been unsuccessful after multiple attempts. Therefore, AVT asks the Court to authorize service on Defendant Weiss, both

individually and as an officer of Defendant Cubitac, by first class and certified mail to 48 Bakertown Road, Unit 415, Monroe, New York 10950.

### **STATEMENT OF FACTS**

1. The New York State Department of State Division of Corporations Entity Information website (“Website”), lists no registered agent for Defendant Cubitac but does list Defendant Weiss as the company’s chief executive officer. *See* Website, a true and accurate representation of which is attached hereto as Exhibit A.

2. The Website lists Defendant Weiss’ address as being 48 Bakertown Road, Unit 208. *See id.*

3. A process server attempted to serve Defendant Weiss at this location, both as an individual defendant and as an agent of Defendant Cubitac, on September 24, 2019. The building’s management office and neighboring businesses told the process server that Defendant Cubitac is located at Unit 415 rather than Unit 208.

4. After arriving at Unit 415, the process server delivered the summons and complaint to an individual who, although he agreed to receive the documents, refused to identify himself. *See* Affidavit of Service from September 24, 2019, a true and accurate copy of which is attached hereto as Exhibit B.

5. Knowing the process server’s attempt at delivery of the documents would be insufficient to constitute service, AVT’s counsel, pursuant to Fed. R. Civ. P. 4(e)(1) and Utah R. Civ. 4(d)(2), attempted to serve the summons and complaint via USPS Adult Signature Restricted Delivery, a method of delivery that sets limitations on who can receive the package. In this case, Defendant Weiss was designated as the only individual who could sign for and

receive the documents. *See USPS Tracking*, a true and accurate copy of which is attached hereto as Exhibit C.

6. On September 27, 2019, the USPS delivery worker attempted to deliver the documents to Defendant Weiss but, upon arriving at Defendant Cubitac's office, was told that Defendant Weiss was unavailable to receive the documents. *See id.*

7. On September 28, 2019, the documents were "returned to the sender" because of an incorrect address." *See id.*

### **ARGUMENT**

AVT attempted to serve Defendant Weiss multiple times at multiple addresses; however, these attempts failed. The failure to serve Defendant Weiss at those addresses shows that he is attempting to avoid service. AVT has reason to believe that 48 Bakertown Road, Unit 415, Monroe, New York 10950 is still Defendant Cubitac's business address. This belief was confirmed when, during the September 24, 2019 attempt by the process server, the building management and neighboring businesses told the process server that Unit 415 is Defendant Cubitac's office. Therefore, AVT asks the Court to authorize service by first class and certified mail to 48 Bakertown Road, Unit 415, Monroe, New York 10950.

AVT believes that this method of service is reasonably calculated to notify Defendant Weiss and Defendant Cubitac of the pendency of this action because this address appears to be the company's current business address. Therefore, Defendant Weiss and Defendant Cubitac will be notified of the suit.

**CONCLUSION**

For the reasons set forth above, the Court should authorize alternative service by first class and certified mail to 48 Bakertown Road, Unit 415, Monroe, New York 10950.

DATED this 7<sup>th</sup> day of October 2019.

/s/ Michael C. Barnhill  
Attorney for Plaintiff